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MICHAEL RODAK, JR., CLERK

Supreme Court Of The United States

October Term 1972
No. 72-2

RAY PALMER - - - - - - - - Petitioner

versus

UNITED STATES OF AMERICA - Respondent

AND

RAY PALMER and
MAURICE ROBERT HETTICH - - - Petitioners

versus

UNITED STATES OF AMERICA - Respondent

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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PETITION FOR REHEARING OF ORDER DENYING CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner respectfully requests that this Court grant rehearing of its order dated October 9, 1972, which denied certiorari, and that the Court now grant certiorari.

The petition for certiorari previously filed herein presented the question whether the legislative branch can violate the petitioner's Fourth Amendment rights by prescribing in 18 U.S.C. §1955 the elements necessary to establish a conclusive presumption of

probable cause to issue a search warrant. The petition for certiorari discussed the importance of the question presented by the Sixth Circuit's decision in this case and its impact upon the administration of justice in the federal courts.

Petitioners feel their ineptness may have caused the Court to misapprehend the question presented in their petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit. It is with considered deliberation that we urge upon this Court the seriousness of the question presented for its consideration.

If Congress can, by legislative decree, establish an inference which supplies one element of an offense that mandatorily requires the issuance of a search warrant, if other elements are shown, it will destroy the Fourth Amendment rights which protects the security of people, their homes and businesses, subject only to the discretion of the United States Congress. It will eliminate what has historically been considered a constitutional requirement that inferences to support a search warrant must be drawn by neutral and detached magistrates.

This Court has written in no uncertain terms that the requirement of a search warrant includes the necessity that inferences to support search must be drawn by a neutral and detached magistrate instead of being judged by officers in the often competitive enterprise of ferreting out crime. Surrender by the judiciary of citizens' Fourth Amendment rights to the United States Congress or to law enforcement agencies is of great significance.

Mr. Justice Jackson writing for the Court stated in *Johnson* v. *United States*, 333 U.S. 10, 13-14:

"The point of the 4th Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. * * * When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or a government enforcement agent."

CONCLUSION

As referred to *Johnson* v. *United States*, supra, the protection of the Fourth Amendment requires that those inferences which reasonable men draw from evidence must be drawn by a neutral and detached magistrate and cannot be judged by an officer engaged in the often competitive enterprise of ferreting out crime.

Congress cannot maintain the requisite neutrality to make a determination of whether there is probable cause to issue a search warrant, based upon its congressional investigation in gathering facts for the purpose of enacting legislation. *Coolidge* v. *New Hampshire*, 403 U.S. 443.

When the judiciary surrenders to Congress its power to protect the people under the Fourth Amendment, it matters little whether the surrender is to the Congress or to law enforcement agencies.

WHEREFORE, the Petitioners respectfully request that this Court grant a rehearing on their petition and issue a writ of certiorari to the Sixth Circuit Court of Appeals in this action.

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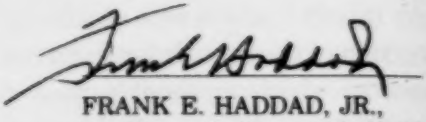
CERTIFICATE OF COUNSEL

Pursuant to Rule 58, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in paragraph 2 of Rule 58.



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